IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8753 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASANTKUMAR THOMAS RATHOD

Versus

PRINCIPAL

Appearance:

MR NS SHETH for Petitioners

M/S TRIVEDI & GUPTA for Respondent No. 1

MR PREMAL JOSHI, AGP for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/04/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners, two in number, have challenged the appointment of respondent No. 1 as Assistant Teacher in Vimal Mariam High School at village Gamdi, Taluka Anand, District Kheda on the ground that although the petitioners were eligible, the petitioners

were not called for interview for the post in question.

2. The respondent school management had published an advertisement inviting applications from the candidates possessing qualifications of B.A., B.Ed. (Hindi & Gujarati) for the post of an Assistant Teacher in respondent No.1 school. According to the petitioners, since they possessed the qualifications, they should have been called for the interview. According to the petitioners, the petitioners also possess the educational qualifications as prescribed by the Gujarat Secondary Education Regulations, 1974.

3. Affidavit in reply has been filed on behalf of respondent No. 1 school management. The Principal of the school has, apart from raising preliminary contention like availability of alternative remedy and non-maintainability of a petition against a private school, also pointed out that the school required an Assistant Teacher with qualifications of B.A., B.Ed. (Hindi & Gujarati). The management received in all 59 applications from various candidates. The school decided to call for interview only those candidates who had secured more than 60% marks in B.Ed. examination. Only six candidates out of 59 had secured more than 60% and, therefore, they were called for interview. 14 other candidates whose names were sponsored by the Employment Exchange and Social Welfare Officer were also called for interview. Respondent No. 3 was selected by the Selection Committee and was granted appointment as an Assistant Teacher by the school management. The appointment of respondent No. 3 was also sanctioned by the District Education Officer vide his order dated 6.12.1990. It is submitted that the appointment of respondent No. 3 was made after following the procedure prescribed in Grant-in-Aid Code. The appointment was also approved by the District Education Officer though the provisions of Section 35 of the Secondary Education Act are not applicable to minority institutions like respondent No.1 school.

The affidavit in reply further points out the reasons for not calling the petitioners for interview as under :-

(i) Petitioner No. 1 had not mentioned his percentage or class obtained by him at the examinations of B.A. or B.Ed. Since only candidates who had secured more than 60% marks in B.Ed. examination were called for interview, petitioner No. 1 was not called for interview.

(ii) As regards petitioner No. 2, it is stated that petitioner No. 2 possesses the qualifications of B.A. (History, Gujarati) and B.Ed. (Hindi, History) and, therefore, the said qualifications were not as required by the school management and as reflected in the advertisement. Respondent No. 3 possess the qualifications as required by the school management.

4. In view of the aforesaid averments made in the reply affidavit, it cannot be said that the action of the respondent No. 1 school management in not calling the petitioners for interview was arbitrary or illegal. It is clarified that this finding is given without going into the question whether the petition against the respondent No. 1 school management is maintainable or not or any other question regarding the status of respondent No. 1 school management as a minority institution or otherwise. Otherwise also, this Court is not inclined to interfere with the appointment of respondent No. 3 as as Assistant Teacher which was made 10 years ago.

5. In view of the above discussion, the petition is dismissed. Rule is discharged with no order as to costs.

April 26, 2000 (M.S. Shah, J.)

sundar/-